

# **EXHIBIT F**

MARILYN HOLLEY - 04/05/2017

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF NEW JERSEY

3 KIMBERLEE WILLIAMS, )  
4 et al., )

5 PLAINTIFFS, )

6 )

7 vs. ) CIVIL ACTION  
8 ) NO. 11-CV-01754

9 BASF CATALYSTS LLC, )  
10 et al., )

11 DEFENDANTS. )

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13 - - - - -  
14 THE VIDEOTAPED DEPOSITION OF MARILYN HOLLEY  
15 WEDNESDAY, APRIL 5, 2017  
16 - - - - -

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18 The videotaped deposition of MARILYN HOLLEY,  
19 called by the Defendants for examination pursuant  
20 to the Federal Rules of Civil Procedure, taken  
21 before me, the undersigned, Sarah R. Drown, Notary  
22 Public within and for the State of Ohio, taken at  
23 the offices of Thompson Hine LLP, 3900 Key Center,  
24 127 Public Square, Cleveland, Ohio, commencing at  
25 10:01 a.m., the day and date above set forth.

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1 Q And as a class representative, could you point  
2 me to the person who would know anything about  
3 those practices as referenced in the complaint?

4 MR. COREN: Objection to  
5 the form.

6 Q Could I talk to Mr. Bevan? Would he be a  
7 better person to talk to?

8 A Yes. Because I consider accepted practices to  
9 be an issue that the attorneys would know  
10 about, not an issue that I would know about  
11 personally.

12 Q So it's something --

13 A In spite of reviewing -- I review the complaint  
14 based upon -- based upon facts that I know of.  
15 The legal issues I rely on the attorneys. I  
16 consider that to be a legal issue when you say  
17 "accepted practices." How would I know about  
18 accepted practices as a layperson?

19 Q That would be Mr. Bevan?

20 A Right.

21 Q Okay. And turn to the next sentence. It says,  
22 "reasonably relying upon and acting upon the  
23 misrepresentations and material omissions of  
24 Defendants regarding Engelhard's talc products  
25 and the absence of any evidence indicating

1 Engelhard's talc contained asbestos fibers that  
2 were made to her attorney and representative,  
3 Thomas Bevan, as set forth more particularly  
4 herein."

5 Do you see that?

6 A Yes.

7 Q I think you mentioned earlier that the alleged  
8 representations were made to or known about by  
9 Mr. Bevan, not you, correct?

10 A That would be correct.

11 Q So if I want to ask somebody about that  
12 sentence, I would have to ask Mr. Bevan,  
13 correct?

14 A Yes. It says, "that were made to her attorney  
15 and representative, Thomas Bevan."

16 Q And then going to the next sentence, it says,  
17 "Plaintiff voluntarily dismissed her lawsuit  
18 against Eastern Magnesia as part of a nominal  
19 settlement with a group of talc supplier  
20 defendants without receiving full, fair and  
21 adequate compensation for her asbestos injury  
22 claims against BASF's predecessors."

23 Do you know anything about that sentence  
24 and the facts underlying it?

25 A That my mom accepted settlement based upon the

1 facts that her attorneys had at that time.

2 Q And you know about that through Mr. Bevan,  
3 correct?

4 A Yes, I do.

5 Q Other than what you know from Mr. Bevan, you  
6 don't have any personal knowledge?

7 A I have no personal knowledge.

8 Q Turning to the next page, still paragraph 25.  
9 "Plaintiff Holley did not know and learn that  
10 her decedent was a victim of Defendants'  
11 Fraudulent Asbestos Defense Scheme until late  
12 2010/early 2011, when she was informed of the  
13 same by her attorney, Tom Bevan."

14 Do you see that?

15 A Yes.

16 Q Do you have any papers, documents, emails, that  
17 could put a more specific date on when  
18 Mr. Bevan informed you of this fraudulent  
19 asbestos defense scheme?

20 A To the best of my recollection, it was late  
21 2010, early 2011 when I met with -- when I met  
22 at Attorney Bevan's office.

23 Q Okay. And was that the same meeting  
24 Mr. Placitella was at?

25 A Yes.

1 Q So the first time you heard of this alleged  
2 scheme and filing a class action complaint was  
3 a meeting with Mr. Bevan and Mr. Placitella  
4 that lasted about two hours at Mr. Bevan's  
5 office?

6 A One or two hours. And let me -- let me  
7 clarify. It was -- Mr. Coren was there.

8 Q And Mr. Coren too?

9 A Uh-huh. Yeah.

10 Q And after that the complaint was filed?

11 A Sometime after that. I don't remember exactly  
12 when, but sometime after that meeting the  
13 complaint was filed.

14 Q Did you have any other meetings between that  
15 first meeting and the time the complaint was  
16 filed?

17 A I can't recall for sure. I know that there  
18 were at least one or two more meetings, but I  
19 can't say specifically if they were before or  
20 after the complaint was filed.

21 Q And at any of those meetings were there people  
22 besides your attorneys or other class  
23 representatives?

24 A At the first meeting for sure.

25 Q The other class reps were at the meeting?

1 A Yes.

2 Q Were there people who weren't class  
3 representatives at the meeting?

4 A I would not know that.

5 Q Okay. After -- withdrawn.

6 After that first meeting, were there  
7 other meetings where people attended who were  
8 not class reps or attorneys?

9 A Not that I can recall. I won't say  
10 unequivocally, but not that I can recall.

11 Q And at this first meeting, did Mr. Placitella  
12 in words or in substance, or any of his  
13 colleagues, tell you to make sure you  
14 maintained all of your documents relating to  
15 the underlying Bevan cases against Emtal?

16 A No, I was not specifically told that.

17 Q Were you ever told that?

18 A Not specifically, no.

19 Q Turning to the next sentence of paragraph 25.  
20 "Had Plaintiff's counsel and Plaintiff known  
21 about the existence of spoliation described  
22 more particularly herein and/or the existence  
23 of evidence that BASF's talc and talc products  
24 contained asbestos, the settlement demand would  
25 have been higher and/or the Plaintiff would

1 have taken her case to trial."

2 Do you see that?

3 A Yes.

4 Q Do you have any knowledge of the facts  
5 surrounding the settlement demand and whether  
6 you would have taken the case to trial or is  
7 that a Mr. Bevan topic as well?

8 A I have no personal knowledge of that, no.

9 Q And it says here plaintiffs would have taken  
10 the case to trial.

11 Do you see that?

12 A Yes.

13 Q Out of the 98 or so cases -- withdrawn.

14 Out of the 98 or so defendants that  
15 you've sued, have any of those cases gone to  
16 trial?

17 A We did not go --

18 MR. COREN: Form objection.

19 You can answer it.

20 THE WITNESS: Okay.

21 A We did not go to trial.

22 Q In any of them?

23 A We did not go to trial.

24 Q But Mr. Bevan would know whether this was the  
25 case that you were going to take to trial?



1 He's the person I should ask?

2 A He would know that. I specifically personally  
3 recall that BFGoodrich defendant settled within  
4 a week before the trial date.

5 Q And then the next sentence says, "Plaintiff is  
6 willing and offers to return the portion of the  
7 settlement contributed by BASF, or such amount  
8 the Court deems fair and just, in order to be  
9 restored to the status quo ante the settlement  
10 with BASF."

11 So the plaintiff, that's you, correct?

12 A Correct.

13 Q And that means you're willing to return the  
14 money you've already gotten from BASF or  
15 Engelhard?

16 A If I'm not mistaken in the way I read this  
17 paragraph, the money would have been returned  
18 if there had not been a problem with BASF.

19 Q Do you know how much money you or the estate  
20 received from BASF or Engelhard?

21 A I don't know. I don't remember the amount. I  
22 don't remember.

23 Q Okay. In settling these cases -- by the way,  
24 you've dealt with various settlements of people  
25 who had asbestos, correct?

1 A Correct.

2 Q And have you dealt with defendants who didn't  
3 have asbestos?

4 A I can't recall.

5 Q By the way, with respect to -- withdrawn.

6 You've been acting as a representative  
7 for your mother's estate since 2000 in these  
8 asbestos cases?

9 A No. No. 2000 was prior to her death.

10 Q Okay.

11 A Okay. She passed June 7, 2001.

12 Q Correct.

13 A Okay.

14 Q So since that time you've been responsible for  
15 handling the asbestos cases?

16 A Since that time -- in 2001 we did open up an  
17 estate with the local Probate Court.

18 Q And you mentioned before that you've received  
19 hard copies of documents from Mr. Bevan?

20 A Correct.

21 Q And you say you haven't received any emails  
22 from Mr. Bevan?

23 A No. We usually deal with the documents  
24 themselves via hard copy.

25 Q Okay. So Mr. -- if Mr. Bevan has emails to

1 settlement?

2 A Yes.

3 Q And did you -- withdrawn.

4 And has Mr. Bevan represented you in  
5 these aggregate settlements?

6 A Yes.

7 Q Now, if you turn to paragraph 230, at the very  
8 bottom of the page, it says, "Correspondingly."  
9 Do you see it at the bottom right?

10 A Uh-huh.

11 Q "Correspondingly, the Bevan Law Firm asbestos  
12 injury clients, including Plaintiff Pease,  
13 Plaintiff Holley's decedent, Ms. Darnell, and  
14 Plaintiff Ware, as well as others similarly  
15 situated to them, would not have given their  
16 consent or authorization to participate in an  
17 aggregate settlement with BASF."

18 Do you see that?

19 A Yes.

20 Q Do you have any knowledge of whether or not you  
21 would have given authorization to participate  
22 in a settlement with BASF?

23 A I have no knowledge of that.

24 Q If I wanted -- the person who would have  
25 knowledge of that would be Mr. Bevan, correct?

1 A Yes, it would have been Mr. Bevan.

2 Q All right. Could you turn to page -- to  
3 paragraph 289.

4 A Okay.

5 Q It says, "Plaintiffs' claims are typical of the  
6 claims of other Class Members'."

7 Do you see that?

8 A Yes.

9 Q Do you know what that means?

10 A Yes.

11 Q What does that mean to you?

12 A It says because we were similarly affected by  
13 Defendants' spoliation of asbestos evidence.

14 Q And do you have any facts to that or is that a  
15 Mr. Bevan issue?

16 A That's a Mr. Bevan issue.

17 Q Okay. Could you turn to paragraph 316.

18 A I'm there.

19 Q Okay. It says, "As a further proximate" cause  
20 "of the above described deliberate gathering  
21 and withholding, destruction and/or concealment  
22 of documents and evidence relating to Class  
23 Members' underlying asbestos claims, and/or the  
24 false and misleading statements thereafter that  
25 no documents or evidence existed, Plaintiffs

1 and other Class Members may or will incur, or  
2 have already incurred pecuniary losses and  
3 damages, including but not limited to the loss  
4 of their underlying asbestos injury claim, the  
5 expenses and costs of proceeding without this  
6 evidence incurred in the effort to replace,  
7 locate, or identify evidence, and the cost of  
8 prosecuting this case to prove the fraudulent  
9 concealment and spoliation of evidence."

10 Do you see that?

11 A Yes.

12 Q Okay. First of all, the pecuniary damages,  
13 what pecuniary damages, what money damages have  
14 you suffered?

15 A What money damages?

16 Q Yeah.

17 A Are you asking are there money damages that I  
18 have suffered personally?

19 Q Yes.

20 A I'd have to give thought to that question. I'm  
21 not certain what's involved in money damages  
22 for me. Are you talking about time? Are you  
23 talking about any kind of material loss that I  
24 have had? I'm not sure what that means.

25 Q What about in terms of your mother's estate,

1 what money damages has that incurred?

2 A What do you mean?

3 Q Well, it says that class members, plaintiffs --

4 A Right.

5 Q -- have -- may or will incur or may have  
6 already incurred pecuniary or monetary losses  
7 and damages, including but not limited to the  
8 loss of their underlying asbestos injury  
9 claims, and then it goes on.

10 A Uh-huh.

11 Q So let's start there. With respect to the loss  
12 of the underlying asbestos injury claim, do you  
13 think that that's a loss that you or your  
14 mother's estate has incurred?

15 A Yes.

16 Q Okay. And how much?

17 A How much?

18 Q Is that loss?

19 MR. COREN: Objection as to  
20 form.

21 A As in a monetary value?

22 Q Yes.

23 A I would not be able to answer that.

24 Q Well, you now have testified you've been  
25 involved with Mr. Bevan for 15 years settling

1 cases against asbestos defendants, including,  
2 as we're going to see, people who actually  
3 created asbestos piping where your mother  
4 worked.

5 A Right.

6 Q And you settled those cases?

7 A Right.

8 Q So you have some understanding of what cases  
9 settle for, correct?

10 A I have some understanding of what cases settled  
11 for, but I do not know how the figures were  
12 derived.

13 Q Well, as we sit here today, do you have any  
14 amount of money that you could identify for me  
15 as your loss for having your mother's claim  
16 dismissed or settled against BASF?

17 MR. COREN: Objection as to  
18 form.

19 You can respond.

20 A I have -- I have no idea. That has not been  
21 discussed.

22 Q Well, do you know that you or your mother's  
23 estate have settled with other talc  
24 manufacturers?

25 A I know that they have settled with other

1 defendants, whether or not they were talc  
2 manufacturers, I'm not certain. I particularly  
3 remember defendants like BFGoodrich, Cooper,  
4 that sort of thing.

5 Q And you said you understood the term "aggregate  
6 settlements" --

7 A Right.

8 Q -- right?

9 A Right.

10 Q That's where maybe a bunch of defendants --

11 A Right.

12 Q -- were settling --

13 A Right.

14 Q -- with a bunch of plaintiffs --

15 A Right.

16 Q -- correct?

17 A Right. Right.

18 Q And would you agree with me, would it be fair  
19 if I can show you that your mother or your  
20 mother's estate settled with talc manufacturers  
21 who admitted they had asbestos in the talc,  
22 that would be instructive for you in  
23 understanding what the damages are in having  
24 settled with Engelhard, correct?

25 A I think it's instructive to a certain extent.